

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petitions:** 03-009-12-1-3-00002  
03-009-13-1-4-00006  
03-009-14-1-4-00002  
03-009-15-1-3-00098-15  
03-009-16-1-3-00014-17  
**Petitioner:** Columbus Container, Inc.  
**Respondent:** Bartholomew County Assessor  
**Parcel:** 03-05-15-000-000.220-009  
**Assessment Years:** 2012, 2013, 2014, 2015 and 2016

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

**Procedural History**

1. The Petitioner initiated its 2012 assessment appeal with the Bartholomew County Assessor on January 11, 2013. On December 13, 2013, the Bartholomew County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner any relief. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board on December 30, 2013.<sup>1</sup>
2. The Petitioner initiated its 2013 appeal on December 9, 2013. On December 30, 2014, the PTABOA issued its determination denying the Petitioner any relief. The Petitioner timely filed a Form 131 with the Board on February 11, 2015.
3. The Petitioner initiated its 2014 appeal on November 17, 2014. On January 15, 2015, the PTABOA issued its determination denying the Petitioner any relief. The Petitioner timely filed a Form 131 with the Board on February 11, 2015.
4. The Petitioner initiated its 2015 appeal on August 10, 2015. On September 4, 2015, the PTABOA issued its determination denying the Petitioner any relief. The Petitioner timely filed a Form 131 with the Board on September 15, 2015.
5. Finally, the Petitioner initiated its 2016 appeal on June 30, 2016. On November 18, 2016, the PTABOA issued its determination again denying the Petitioner any relief. The Petitioner timely filed a Form 131 with the Board on January 3, 2017.

---

<sup>1</sup> The Petitioner elected the Board's small claim's procedures for each year under appeal. Even though the subject property is currently valued in excess of the \$1,000,000 limit for small claims, the Respondent did not object. 52 IAC 3-1-2. Similarly, the Respondent did not exercise its option to opt out of the Board's small claims procedures. 52 IAC 3-1-3. For these reasons, the appeals were heard under the Board's small claims rules.

6. The Board issued notices of hearing on April 12, 2017.
7. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's consolidated administrative hearing on May 16, 2017. She did not inspect the property.
8. Tax Representative Milo Smith appeared for the Petitioner. County Representative Virginia Whipple appeared for the Respondent. Bartholomew County Assessor Lew Wilson was a witness for the Respondent. All of them were sworn.

### **Facts**

9. The property under appeal is a warehouse located on Presidential Way in Edinburgh.
10. The PTABOA determined the total assessment for all years under appeal is \$8,126,600 (land \$553,800 and improvements \$7,572,800).
11. The Petitioner did not request a specific total assessment.

### **Record**

12. The official record for this matter is made up of the following:
  - a) Form 131s with attachments,
  - b) A digital recording of the hearing,
  - c) Exhibits:<sup>2</sup>

Petitioner Exhibit 1:	2011 subject property record card,
Petitioner Exhibit 2:	2012 subject property record card,
Petitioner Exhibit 3:	2013 subject property record card,
Petitioner Exhibit 4:	2014 subject property record card,
Petitioner Exhibit 5:	2015 subject property record card,
Petitioner Exhibit 16:	2016 subject property record card. <sup>3</sup>

Respondent Exhibit A:	Curricula Vitae for Lew Wilson and Virginia Whipple,
Respondent Exhibit B:	"Statement of Professionalism,"
Respondent Exhibit C:	Subject property record card,
Respondent Exhibit D:	Subject property record card,
Respondent Exhibit E:	Aerial photograph of subject property,

---

<sup>2</sup> The Petitioner offered one set of exhibits applicable to all five years under appeal. The Respondent submitted the same exhibits for each year, but the content of Respondent's Exhibits C, D, G, H, I and J is specific to the year of appeal.

<sup>3</sup> The Petitioner did not offer exhibits numbered 6-15.

- Respondent Exhibit F: Indiana Board of Tax Review Hearing Information and Instructions,
- Respondent Exhibit G: Page 2 of Form 131,
- Respondent Exhibit H: Form 130,
- Respondent Exhibit I: PTABOA agenda and minutes,
- Respondent Exhibit J: PTABOA “summary,”
- Respondent Exhibit K: Text of 52 IAC 3-1-1 et sec,
- Respondent Exhibit L: E-mail from Barry Wood to Dean Layman dated June 17, 2015,
- Respondent Exhibit M: Property record cards for Kramer Property LLC and Edinburgh LLC.
  
- Board Exhibit A: Form 131s with attachments,
- Board Exhibit B: Notices of hearing dated April 12, 2017,
- Board Exhibit C: Notice of County Assessor Representation, Power of Attorney, and Application for Certification as a professional Appraiser for Virginia Whipple,
- Board Exhibit D: Hearing sign-in sheet.

d) These Findings and Conclusions.

### **Contentions**

#### 13. Summary of the Petitioner’s case:

- a) The subject property is incorrectly assessed. The Petitioner initiated its assessment appeals because the Respondent removed the “28% and 29% obsolescence depreciation factors” that had been applied to the assessments from 2002 to 2011. According to Mr. Smith, the buildings cost approximately \$6.2 million to construct in 2002. In 2002, the Petitioner filed an appeal with the Assessor requesting that the buildings be priced according to the “General Commercial Kit (GCK) cost schedule because it more accurately reflected the actual cost.” The Assessor at that time opted to value the buildings according to the “General Commercial/Industrial (GCI) cost schedule along with applying the obsolescence factors.” *Smith testimony; Pet’r Ex. 1, 2, 3, 4, 5, 16.*
- b) The obsolescence factors should not have been removed “without any discussion with the property owner.” The buildings “are not GCI C-grade structures.” The buildings consist of “a true pre-engineered concrete wall which was constructed on site.” Removing the obsolescence factors amounts to changing “the underlying parcel characteristics from the previous year’s assessment.”<sup>4</sup> Consequently, the Assessor is required to correct the assessment. *Smith argument* (citing Ind. Code § 6-1.1-4-4.4(b)).

---

<sup>4</sup> Mr. Smith defined a “characteristic” as “a special quality or trait that makes a person or group different from others.” *Smith testimony.*

c) Mr. Smith admitted that he “didn’t look at what the market value is on this property” but still argues that the 28% and 29% obsolescence factors should be “carried forward” to 2012, and subsequently applied to 2013, 2014, 2015 and 2016. *Smith argument.*

14. Summary of the Respondent’s case:

a) The subject property is assessed correctly. No “characteristic changes” have been made. The only change made was to the depreciation and obsolescence factors. *Whipple argument; Resp’t Ex. C, D.*

b) The Respondent has “sound valued” or “externally priced” the subject property for each year under appeal. While the property record cards may indicate something different, the value has never changed. *Whipple testimony.*

c) The Petitioner failed to meet its burden in proving the property’s market value-in-use. Accordingly, the current assessments should not be changed. *Whipple argument.*

### **Burden of Proof**

15. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass’r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.

16. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).

17. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.

18. Mr. Smith also cited to Ind. Code § 6-1.1-4-4.4(b), which states, “[I]f the assessor changes the underlying parcel characteristics, including age, grade, or condition of a

property, from a previous year's assessment date, the assessor shall document: (1) each change; and (2) the reason that each change was made. In any appeal of the assessment, the assessor has the burden of proving that each change is valid.”

19. In order for the burden of proof to shift to the Respondent under either statute, the assessment under appeal is compared to the previous year's assessment. Here, both parties acknowledged that the assessment did not increase from 2011 to 2012. In fact the assessment remained the same. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply.
20. Similarly, Ind. Code § 6-1.1-4-4.4(b) does not shift the burden to the Respondent in this case. True, the 28% and 29% obsolescence factors applied to the 2011 assessment do not “specifically appear” on the 2012 property record card. According to the Respondent, the reason is that the property was “sound valued” beginning in 2012.<sup>5</sup> Regardless, as previously stated, the property's assessed value is exactly the same in 2012 as it was in 2011. Thus, the evidence does not support the notion that the Respondent changed “the underlying parcel characteristics” and the Petitioner failed to convince the Board the burden should shift to the Respondent under this statute.
21. Consequently, the burden remains with the Petitioner for the 2012 assessment appeal. The burden for each subsequent year will be determined by the results of the immediately preceding year's appeal.

### **Analysis**

22. The Petitioner failed to make a prima facie case that the assessments should be reduced.
  - a) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
  - b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the 2012-2015 assessments, the valuation date was March 1 of

---

<sup>5</sup> A “sound value estimate” is “an estimate of the depreciated value of an improvement made directly by comparing it to the improvements of a comparable condition, desirability, and usefulness without first estimating its replacement cost new.” 2011 REAL PROPERTY ASSESSMENT GUIDELINES, Glossary at 21 (incorporated by reference at 50 IAC 2.4-1-2).

each respective year. *See* Ind. Code § 6-1.1-4-4.5(f). For the 2016 assessment, the valuation date was January 1, 2016. *See* Ind. Code § 6-1.1-2-1.5.

- c) Here, the Petitioner argues the obsolescence depreciation factors were erroneously removed for each year under appeal. Specifically, the obsolescence factors of 28% and 29% should be reinstated for each year.
- d) In support of this argument, the Petitioner referenced the original cost to construct the subject property. While Mr. Smith failed to offer any documentation detailing the construction costs, his undisputed testimony indicated the subject property was constructed for \$6.2 million in 2002.
- e) As previously noted, the Guidelines contemplate using the actual construction costs of a subject property as evidence of its market value-in-use. MANUAL at 2. But again, such evidence must be compiled in accordance with generally accepted appraisal principles, and the party offering the evidence must explain how it relates to the relevant valuation date. *Id.*; *Long*, 821 N.E.2d at 466, 471. Here, the Petitioner failed to relate the construction costs to any of the relevant valuation dates. Thus, the Petitioner failed to establish how the construction costs have any probative value.
- f) Mr. Smith admitted that he “didn’t look at what the market value is on this property.” Instead, he focused on the methodology used to compute the assessment. Both the Board and the Tax Court have repeatedly held that arguments based on strict application of the Guidelines are not enough to prove error in the assessment. *O’Donnell*, 854 N.E.2d at 90, 95; *Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 764, 768 (Ind. Tax Ct. 2006). Even if the Respondent’s assessment did not comply with the Guidelines, the Petitioner failed to show how the difference would change the market value-in-use.
- g) Consequently, the Petitioner failed to make a prima facie case that the 2012 assessment is incorrect. Where a Petitioner has not supported its claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-22 (Ind. Tax Ct. 2003).
- h) For each subsequent year at issue, the burden remained with the Petitioner. And for the same reasons as noted above, the Petitioner failed to make a case that any of the subsequent years assessments are incorrect.

### **Conclusion**

23. The Board finds for the Respondent.

## Final Determination

In accordance with these findings and conclusions, the 2012, 2013, 2014, 2015 and 2016 assessments will not be changed.

ISSUED: August 9, 2017

---

Chairman, Indiana Board of Tax Review

---

Commissioner, Indiana Board of Tax Review

---

Commissioner, Indiana Board of Tax Review

### - APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.